

**SECTION: ADMINISTRATION****TITLE: Response to Resistance****REVISED:** February 21, 2019**Date Issued:** January 12, 2016**CALEA Standards:** 1.3.1, 1.3.2, 1.3.3, 1.3.4, 1.3.5, 1.3.6,
1.3.7, 1.3.8, 1.3.12, 1.3.13**Chief of Police**
David K. Jernigan**PURPOSE:** To provide sworn personnel with guidelines for responding to resistance.**POLICY:** It is the policy of the Madison Police Department that sworn personnel will use only the degree of response to resistance that is reasonably necessary to accomplish lawful objectives.**SCOPE:** This policy is applicable to all agency personnel.**RESPONSIBILITY:** It shall be the responsibility of all agency personnel to familiarize themselves with and adhere to this written directive.**I. Definitions**

- A. Lateral Vascular Neck Restraint – A control technique in which the sides of the neck are compressed, restricting blood flow, causing the subject to lose consciousness.
- B. Less-lethal Response – Any physical means or weapon used to control, restrain, or overcome the resistance of another. It is neither likely nor intended to cause death or serious physical injury.
- C. Lethal Response – Any physical means, weapon, or device used that creates a substantial risk of causing death or serious physical injury.
- D. Objectively Reasonable – The facts or circumstances the officer knows, or should know, are such as to cause an ordinary and prudent officer to act or think in a similar way under similar circumstances.
- E. Resistance – Any behavior, actually occurring or that is reasonably perceived will occur, that attempts to overcome or evade an officer's ability to perform his/her lawful duties.
- F. Response to Resistance – The authority of sworn personnel to intervene to resolve conflict, prevent certain actions, or dissuade a particular course of action by offenders.
- G. Serious Physical Injury – A bodily injury that creates a substantial risk of death, causes serious, permanent disfigurement, or results in long-term loss or impairment of the functioning of any bodily member or organ.
- H. Warning Shot(s) – Any discharge of a duty firearm for the purpose of gaining compliance, but not intended to cause physical injury.

II. Response to Resistance

- A. The reasonableness of a particular response to resistance is based on the totality of circumstances known by the officer at the time of the response and weighs the actions of the officer against the rights of the subject.

The standard that courts will use to examine whether a particular response to resistance is constitutional was set forth in Graham vs. Connor, 490 U.S. 386 (1989) and expanded by subsequent court cases.

- B. Situations involving a response to resistance embody an allowance for the fact that officers are often forced to make split-second decisions and may be required to rapidly escalate or de-escalate their level of response depending on the circumstances being confronted.
- C. Officers shall use a level of response that is objectively reasonable. Use of any type of response to resistance, either physical or mechanical, should be discontinued when resistance ceases or when the officer (s) have gained control of the incident.
- D. It is preferable that all encounters are resolved without force; however, officers are not required to sustain physical injury before applying reasonable response to survive an encounter.
 - 1. Facts and circumstances impacting the officer's decision may include, but are not limited to, the following:
 - a) Level of resistance
 - b) Severity of the crime
 - c) Level of imminent threat to the officer or to others
 - d) Subject is resisting arrest or seizure
 - e) Officer's vs. subject's size, strength, and physical abilities
 - f) Presence of other officers
 - 2. Officers should seek to employ tactics and techniques that effectively bring an incident under control, while promoting the safety of the officer, the public, and the suspect. When safe, under the totality of circumstances, officers should consider whether a subject's lack of compliance is deliberate or if he/she displays an inability to comply based on suspected factors including, but not limited to, the following:
 - a) Medical conditions
 - b) Mental or physical impairment
 - c) Language barrier
 - 3. Officers shall consider de-escalation techniques and although not every potential violent confrontation can be de-escalated, officers do have the ability to impact the direction and the outcome of many situations they handle:
 - a) Based on their decision-making and the tactics officers choose to employ
 - b) When reasonable under the totality of circumstances, officers should gather information about the incident, assess the risks, assemble resources, attempt to slow momentum and coordinate a response.
 - c) In their interaction with subjects, officers should use advisements, warnings, verbal persuasion, and other tactics as alternatives to higher levels of response.
 - d) Officers should recognize that they may withdraw to a position that is tactically more secure or allows them greater distance in order to consider or deploy a greater variety of response options.
 - e) Officers shall not knowingly or unreasonably place themselves or others in a position where a threat of imminent danger is created.

III. Less-Lethal Response

- A. Madison police officers are authorized to use less-lethal response to gain compliance when the use of verbal commands or other reasonable options or techniques fail to effectively gain control of the situation.
- B. Officers are trained in self-defense disciplines and control techniques that give officers viable options to gain a tactical advantage to overcome resistance while minimizing the risk of unintended injury.
 - 1. Contact control may include strategic positioning, escort holds, joint manipulation or immobilization, or pressure point stimulation.
 - 2. Officers are authorized to use controlled hand, knee, and leg strikes and less-lethal weapons to overcome physical and aggressive resistance so long as such use is reasonable.
 - a) Expandable Baton
 - b) Conducted Energy Weapon (CEW)
 - c) Specialty Impact Munitions
 - d) Chemical Munitions
 - e) Canines
 - 3. Where deadly response is not objectively reasonable, officers should assess the incident in order to determine which less-lethal technique or weapon will best de-escalate the incident and bring it under control in a safe manner.
 - 4. Officers will not strike or use less-lethal weapons on persons who are restrained, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to the individual, the officer, or another person. In these situations, only the minimal amount of response necessary to overcome the subject's resistance and control the situation shall be used.
 - 5. Officers will not use any maneuver (i.e. choke hold, arm bar technique, etc.) that restricts an individual's ability to breathe for the purpose of incapacitation. Officers are authorized to use the vascular neck restraint so long as it is objectively reasonable.
 - 6. Officers will not use any form of a choke hold in attempts to obtain narcotics from a person suspected of swallowing the substance. If a person is suspected of swallowing any narcotic or other dangerous substance, officers will request medical services.
- C. The purpose of less-lethal means is to temporarily distract, disorient, and incapacitate to allow for safe control without serious injury; however, less-lethal does not guarantee not lethal, so such techniques and weapons must be properly handled and reasonably applied. Less-lethal techniques and weapons are only authorized to be used by officers who have been trained and certified in proper application.
Department Policies and Procedures 7-15 further defines training and use of less-lethal weapons and techniques.
- D. Police canines may be used as a means of defense and to assist in the apprehension of a suspect who poses a threat. *Use of police canines is further defined in Department Policies and Procedures 7-4.*

IV. Lethal Response

- A. Madison police officers are authorized to use lethal response to protect themselves or others from what is reasonably believed to be a threat of death or imminent danger of serious physical injury and/or;
- B. To prevent the escape of a suspect who the officer reasonably believes, based on totality of circumstances and information available to the officer at the time, will pose a significant threat of death or imminent serious physical injury to others if escape should occur.
- C. In the event of a lethal response situation, officers are authorized to use their firearms and any other means available to the officer to stop the threat, with due regard to the safety of bystanders. *Approved firearms and training requirements are further defined in Department Policies and Procedures 7-7.*
 - 1. Warning shots are prohibited.
 - 2. Officers will not discharge their firearm at an occupant of or from a moving vehicle except when extreme circumstances require the immediate use of lethal force.
 - 3. Officers will not use lethal response to subdue persons whose actions are only destructive to property or are injurious only to themselves.
 - 4. The officer should not discharge their firearm into or through a structure or barrier if they cannot identify the person(s) they are engaging.
 - 5. Officers should not exhibit their firearms unless circumstances create a reasonable belief that it may be necessary for the officer to use the firearm and/or its display as an element of constructive authority that helps to maintain control of a potentially dangerous situation.
- D. Where feasible, the officer shall identify himself or herself as a law enforcement officer and warn of his or her intent to use lethal response.
- E. The use of vehicles, flashlights, radios, or any other unauthorized weapon as a means of response to resistance is generally prohibited, except where there is reason to believe that the imminent threat of serious physical injury or death exists and no other option is available.

V. Medical Aid and Supervisor Notification

- A. Medical Aid – If any response results in the appearance of, or is alleged to have resulted in injury of another, officers shall provide first aid in a timely manner at the degree for which they have been trained. Depending on the nature and seriousness of the injury, it may require that officers summon emergency medical personnel to the scene.
 - 1. Arrestee moved to or taken to a medical facility may present a risk to the public. Caution will be taken to ensure the arrestee is isolated from other patients and is not left without law enforcement security or unattended.
 - 2. Employees who have used any chemical irritants on a person will not leave the individual unattended and will continue to provide post-use care of the suspect until the suspect has recovered from the effects.
 - a) Remove the person away from the area of exposure;

- b) Have the person face the wind or placed in an area with constant air flow; and
 - c) If the irritation persists or in a case of severe irritation, irrigate the eyes with clean cool water.
- 3. Medical aid for CEW deployments is further defined in Department Policies and Procedures 7-15(A).
- 4. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored.
- 5. If any person refuses medical attention, such a refusal shall be fully documented and witnessed by medical personnel.
- 6. Officers shall automatically request medical aid in certain situations including, but not limited to, the following:
 - a) Incidents involving subjects who are reasonably believed or known to be the following:
 - i. Pregnant
 - ii. Pre-adolescent children
 - iii. Elderly
 - iv. Physically frail
 - b) Any subjects or officers who sustain the following:
 - i. Gunshot injury
 - ii. Physical or impact weapon strike
 - iii. Strike of their head against a hard, fixed object
 - iv. Loss of consciousness
 - v. The ingestion of narcotics or any other dangerous substance
- 7. Absent exigent circumstances, subjects should not be restrained in a manner that compromises their ability to breathe. Officers are not permitted to use hobble restraints, leg shackles, or any other device to place a subject in a manner which is likely to cause positional asphyxia.
- 8. Officers injured during a response to resistance incident will seek appropriate medical aid and will be further directed by the responding supervisor should further medical attention be deemed appropriate.
- 9. The degree and nature of medical care shall be documented for the subject and officer, if applicable. Photographs shall be taken of all injuries and of areas where injuries are alleged, even if there is no apparent injury.
- B. Supervisors shall be notified of the following:
 - 1. Response to resistance that results in injury;
 - 2. Discharge of a firearm or the use of less-lethal weapon; or
 - 3. Any type of physical action such as pushing, pulling, and throwing.
 - 4. Supervisors shall do the following:
 - a) Ensure that any injured parties are examined and treated;
 - b) Obtain basic facts from the officer(s) taking necessary steps to bring the situation safely and effectively under control; and
 - c) In incidents involving the use of a firearm and/or death or serious injury by an officer, the supervisor will supervise the preliminary investigation of the incident. Supervisor responsibilities are further defined in *Department*

Policies and Procedures 1-9 Post Deadly Force Protocol and 1-17 which covers Command Protocol.

VI. Reporting

- A. Any response to resistance shall be accurately documented in the appropriate police report, including injuries requiring only simple first aid.
1. Officers will be required to complete a Response to Resistance Report form when an officer initiates, is responsible for, and/or is involved in any response to resistance incident, including, but not limited to, the following:
 - a) Discharging of a firearm regardless of injury;
 - b) Any weapon, weaponless means, and/or physical response or any other action that results in or is alleged to have resulted in injury or death of another person;
 - c) Applies force through the use of weaponless means or the use of a lethal or less-lethal weapon;
 - d) Vehicle pursuit that results in injury or death (only those incidents in which a level of response was used or attempted to stop the pursued vehicle, such as the use of a tire deflation device);
 - e) Canine bites/injuries.
 2. Off-duty personnel who discharge a firearm under the color of law will immediately notify the on-duty shift supervisor. Intentional or accidental discharge of firearms will be reported and the officer shall complete a Response to Resistance Report.
 3. A Response to Resistance Report "form" is not required for the following:
 - a) The use of firearms during training or off-duty recreational purposes;
 - b) The use of less-lethal weapons during training; or
 - c) The humane euthanasia of animals. The euthanasia of vicious animals will be guided by the same principles set forth for self-defense and the defense and safety of others. The euthanasia of animals (with exception of wildlife) shall be thoroughly documented in an Incident/Offense Report.
 4. A supervisor may request agency members to complete a Response to Resistance Report for any circumstance that in their opinion needs to be documented.
 5. Reports shall accurately describe, in detail, the circumstances of the incident, including the actions of the subject necessitating the response and the specific response(s) used to overcome the subject's resistance/actions.
 - a) Reports shall accurately detail any medical services rendered.
 - b) Reports shall be submitted to the officer's supervisor along with the appropriate arrest report, incident/offense report, and/or any other supporting documentation, such as witness statements, photos, etc.
- B. Supervisors shall review all reports and any video recording of the incident for policy, training, equipment, or disciplinary issues. Reporting and/or performance concerns shall be detailed in an Officer's Report and submitted to the Chief of Police via the supervisor's Chain of Command.

1. The Chief of Police will review the report and make a final determination of appropriateness.
 - a) A finding of negligence by the Chief of Police may result in disciplinary action to include a requirement that the affected officer undergo remedial training.
 - b) If the Chief of Police determines that an administrative investigation is needed, the affected employee shall be notified.
2. The Office of Professional Standards is responsible for administratively investigating all officer-involved shootings, except for the euthanasia of a dangerous or badly injured animal. *Department Policies and Procedures 4-1 further defines administrative inquiries.*
- C. In incidents involving the discharging of a firearm regardless of injury or having been accidental, the context of the incident shall be presented to an Incident Review Board (IRB). *Department Policies and Procedures 4-5 further defines IRB Proceedings.*
 1. At the discretion of the Chief of Police, an IRB may be convened to review incidents involving serious physical injury as a result of a Department member's activity.
 2. The IRB is an administrative action and does not make determinations of a criminal nature, nor shall the board function as a tool or aspect of any criminal investigation. The IRB shall make recommendations to the Chief of Police with respect to whether the incident was:
 - a) In-Policy
 - b) Out-of-Policy
 - c) Unintentional
 3. The IRB may make recommendations to the Chief of Police regarding the adequacy and thoroughness of an investigation and make policy and/or training recommendations.
 4. The Chief of Police has final authority over the IRB and is responsible for making the final determination regarding the disposition of the incident.
- D. Whenever response to resistance results in death or serious physical injury, the Chief of Police may request an outside agency to conduct an independent investigation of the incident.
- E. All incidents requiring a Response to Resistance Report shall be forwarded to the Office of Professional Standards (OPS) for annual analysis, which will be used by the Department to improve employee and organizational performance.
 1. Analysis will focus on, but will not be limited to, the following:
 - a) Policies
 - b) Procedures
 - c) Training needs
 - d) Equipment needs
 - e) As an early warning system for patterns in officer behavior and decision-making that can be used to assist in individual remediation.
 2. All information gathered shall be forwarded to the Office of the Chief of Police and the Department Training Section.

VII. Administrative Responsibility

- A. Response to resistance that is not lawful, reasonable, and appropriate will not be tolerated. Department policy, as well as relevant Federal, State, and Local laws, governs the use of force by officers.
- B. Any officer observing another officer using a level of response that is clearly beyond that which is objectively reasonable under the circumstances shall safely intercede to direct a reasonable response. Officers shall promptly report such observations to a supervisor.
- C. Any officer whose actions result in the death or serious physical injury of a person shall be placed on administrative leave or alternative duty assignment pending an administrative review of the incident. Such administrative action is automatic and should not be considered punishment or indication of wrongdoing. *Post-incident protocol is further defined in Department Policies and Procedures 1-9.*
 - 1. Any Department employee involved in and/or exposed to a critical or traumatic incident that result in another's death or serious physical injury may be placed on administrative leave at the discretion of the Chief of Police.
 - 2. Regardless of role, employees may seek counseling.
- D. During their initial training and in-service recertification phase of training for firearms and less-lethal weapons, officers shall receive instruction, at least annually, on the Department's Response to Resistance Policy and be given a copy of the directive.
 - 1. Training will also encompass current standards established by statutory requirements and case law.
 - 2. Prior to being authorized to carry any lethal or less lethal weapon, agency personnel must receive instruction on the Department's Response to Resistance Policy.
 - 3. All training will be properly recorded and records of instruction shall be maintained in the Department's training files.